

SENATE JOINT RESOLUTION 860

By Burchett

A RESOLUTION to express the sense of the General Assembly that enemy combatants, including Umar Farouk Abdulmutallab, should be tried by a military commission.

WHEREAS, on December 25, 2009, Umar Farouk Abdulmutallab, a Nigerian citizen, was taken into federal custody after attempting to blow up a transcontinental airline, Northwest Airlines Flight 253, in the sky over Detroit, Michigan; and

WHEREAS, since September 11, 2001, in accordance with Joint Resolution for the Authorization for Use of Military Force, Public Law 107-40, the United States is engaged in hostilities with al Qaeda and is deeply concerned with operation of Islamic terrorist networks; and

WHEREAS, Homeland Security Presidential Directive 5 (2/28/2003) on the Management of Domestic Incidents assigns to the Attorney General of the United States the lead responsibility for criminal investigations of terrorist acts inside the United States; and

WHEREAS, Attorney General of the United States Eric Holder ordered Abdulmutallab to be prosecuted on criminal charges in a United States civilian court rather than in a military commission; and

WHEREAS, the trial of an enemy combatant in civilian courts with its system of justice raises legitimate concerns of public safety, expense, and national security; and

WHEREAS, while the civilian courts of the United States are available for the trial of American citizens, the United States Supreme Court has recognized the use of military commissions for foreign citizens for violations of the law of war during the Second World War in Ex Parte Quirin; and

WHEREAS, Congress has enacted the Military Commissions Act of 2009, title XVIII of Public Law 111-84, which provides for the trial of alien unprivileged belligerents for numerous offenses of the law of war that would be reasonably applicable to the attempted bombing of a civilian airliner, including attacking civilians and civilian objects, hijacking or hazarding an aircraft, attempted murder of protected persons or in violation of the law of war, terrorism and the attempt of such offenses; and

WHEREAS, the Department of Defense has the authority and the ability to interrogate and try Umar Farouk Abdulmutallab and other enemy combatants, and the trial of enemy combatants, including Umar Farouk Abdulmutallab, in a military commission would be appropriate under the Military Commissions Act of 2009; and

WHEREAS, in correspondence with members of the United States Senate, Attorney General Holder acknowledged that no agency had advised that an alternative course to the civilian trial of Umar Farouk Abdulmutallab "should have been, or should now be, pursued", and so has left open the possibility of now pursuing an alternative course, such as a military tribunal; and

WHEREAS, applying the law of war to a non-United States citizen, the Fourth Circuit Court of Appeals in divided en banc review upheld the authority of President George W. Bush to direct the Department of Justice to surrender Ali Saleh Kahlah al-Marri, a foreign citizen, to the Department of Defense for detention, even though there were problems with affording al-Marri sufficient process, and he was eventually tried as a civilian; and

WHEREAS, many observers and lawmakers have called on the President of the United States and the Attorney General to transfer Umar Farouk Abdulmutallab out of the custody of the Department of Justice and to deliver him for trial by a military commission; and

WHEREAS, enemy combatants or alien unprivileged belligerents have been transferred from the custody of the Department of Justice to the Department of Defense in the past, and the appropriate and lawful alternative of a military commission is available to the government of the United States for trying Umar Farouk Abdulmutallab and other enemy combatants; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED SIXTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that it is the sense of this body that Umar Farouk Abdulmutallab and all other enemy combatants or alien unprivileged belligerents should be tried by a military commission.

BE IT FURTHER RESOLVED, that the President of the United States and the Attorney General of United States are encouraged to take whatever steps are necessary to try Umar Farouk Abdulmutallab and all other enemy combatants or alien unprivileged belligerents by a military commission.

BE IT FURTHER RESOLVED, that an enrolled copy of this resolution be transmitted to the President of United States, the Attorney General of the United States, and each member of the Congressional delegation of the State of Tennessee.